

Q: Does the health officer have the power to impose fines now?

A: The Health Department has long held the authority to issue citations for violation of a variety of city and county ordinances dealing with such issues related to business operations such as safe housing, refuse disposal, and food service. Health inspectors do so when merited, after following a process of inspection, notification, time to correct, and failing compliance, citations that are then prosecuted by the city or county through the Eau Claire County Circuit Court. A fine or forfeiture is only imposed following the legal and judicial process.

With respect to the current health order, within the City of Eau Claire, the order is not enforceable by local citation as it is not a local ordinance or authorized by a local ordinance with sufficient legislative oversight retained. Alcohol-licensed establishments have been put on notice that good-faith compliance is expected as part of their licensing. Within the County, an authorizing regulation was adopted for communicable disease enforcement by the Board of Health in May (<https://www.eauclairewi.gov/Home/ShowDocument?id=33309>) but its enforceability is uncertain given subsequent Wisconsin caselaw. Providing clear and consistent local legal authority to issue enforceable orders to respond in time of contagious disease public health emergency is a primary reason for the proposed ordinance.

Q: Does the health officer have the power to hire quarantine and enforcement officers now?

A: Quarantine guards are not related to the ordinances in question, but the health officer has this present authority under state law pursuant to Wisconsin Statutes Section 252.06.

Q: In the current situation, what would have been different if this ordinance would have been in place?

A: It is important to remember that our current situation is unprecedented but that in any communicable disease situation many response strategies may be used to prevent and control spread of the communicable disease. The ordinance establishes a process, not the specific response strategy. Emergency situations are chaotic, sudden, and uncertain by their nature. Though response can be done successfully in an ad hoc manner, such response relies heavily on having the right people in positions to make decision and find footing on shifting, uneven ground, which fortunately has worked out in Eau Claire. The better means of response is to have an established emergency response process that provides a critical element of stability for both those responding to the emergency and to our community in knowing how things will be done if due to the nature of emergency not able to know exactly what will be done. This

ordinance establishes a lawful, legitimate process grounded in sound emergency response principles of timely professional evidence-based response in the immediacy of the emergency tempered by robust public information and input through democratic legislative oversight.

Hypothetical situations are a challenge – as are pandemics – to adequately and fully respond to; however, the ordinance is intended to provide a prompt, evidence-based, effective, legal, enforceable, and coordinated local process for response to a contagious disease threatening our community using the “tool” of generalizable orders. The current order would have fallen under the requirements of this ordinance if it were in place. The current COVID-19 order is framed with such procedural and substantive safeguards that city and county legal departments indicated in May would be a logical and lawful way for us to proceed locally following the Wisconsin Supreme Court’s termination of the statewide orders issued by DHS. While our local order may have been largely the same, the ordinance would have allowed for a more effective use of resources focused on responding to external emergency conditions rather than internally developing and debating the emergency order process. The ordinance would have also from day 1 of the emergency response allowed for any necessary orders to be enforceable and for the public to have greater confidence and buy-in for voluntary compliance to those orders as the public would have had a legitimate input role through the legislative process.

The ordinance, had it been in place, would have provided a framework for that specific type of local response in terms of evidence of conditions present in the community, compilation of best available scientific understanding, findings of fact and conclusions of necessity by the local health officer, clarity of what types of orders are preferred including avoiding classifications of essential or unessential and instead focusing on best means to mitigate disease spread regardless of business type, an ability to set positive norms at the critical early detection stage for certainly education but also enforcement that has been effective in other parts of the country to establish consistent and broad adoption of safe practices. The current order is framed with evidence and data and assures that all constitutional requirements are met. It includes time limits and reporting to the Board of Health as the oversight body that is required in statute.

Q: How does this ordinance differ from those in place or considered in Dane County, Milwaukee, Ashland County, Chippewa County, Dunn County, Brown County, Marathon County, and La Crosse County?

A: When the issue of a contagious disease pandemic was not addressed fully at a national level and then suddenly moved to a matter of local response following the Palm decision in May,

many Wisconsin communities took a variety of responses from advisory only local health orders, local orders with enforcement authority, direct adoption of ordinances requiring specific activity such as mask wearing, and legislative adoption of entire local health orders. Eau Claire City-County Health Department has been utilizing the local order with enforcement authority route. The City of Eau Claire additionally has been adopting the local health order through its emergency declaration, as a strategy to combat COVID-19. Emergency footing that includes shifting legislative authority to the city manager in the case of the City of Eau Claire should not and cannot continue indefinitely. Eau Claire and other communities needed to find a means to timely and professionally address the pandemic emergency while norming new community standards of conduct through lawful and regular means of government.

The Eau Claire ordinance is a proposal that permits prompt emergency response, while always maintaining our democratic principles of legislative authorization of laws or orders applicable and enforceable against us all. The ordinance is well studied, discussed, and reviewed. It is informed by recent state caselaw, a state/local government and business task force, peer review, and national commentary. It is a thoughtful, lawful, balanced, and effective policy choice to permit timely enforceable orders to issue by the local health officer. Some communities acted sooner due to the directive from the attorney general that citation authority would be needed locally, many communities have decided to wait to act based on the current environment of the pandemic creating challenges with collaborative conversations, some had to act in response to lawsuits or were enjoined by lawsuits. Each community of course may choose a different local approach which we properly elect not to comment on. Eau Claire city council and county board will have to make the election for our community.

Q: How does Eau Claire's key numbers and approach compare to other mid-sized cities, like La Crosse, Oshkosh, Wausau, Janesville and others?

A: The COVID-19 data for all counties is available on the Wisconsin Department of Health Services site. (<https://www.dhs.wisconsin.gov/covid-19/data.htm>) Each community listed has a variety of variables that impact their disease rates and strategies making comparisons challenges. A large impact in recent weeks, for example, has been related to large residential UW system campuses and the volume of incoming 18-24 year olds.

Simple comparison data for counties with mid-sized communities is below related to case rates (positive cases/100,000 total population):

Eau Claire County: 1913
Brown County: 3542
Winnebago County: 2395

Lacrosse County: 2615
Outagamie County 2589
Racine County 2534
Marathon County 1082 (small UW campus)
Rock County 1622 (No UW campus)

Typically, a pandemic response would be directed at the national level with clear state requirements although in Wisconsin we have been left to develop locally. All local health departments in the state are using the same strategies to respond at an individual level to COVID-19 through disease investigation, contact tracing, isolation, and quarantine. All local health departments in the state are also providing technical assistance and education to businesses, schools, and individuals. All local health departments in the State have utilized clear recommendations for the risk-based strategies that we are using in our local order even if there is not a local order in place in these communities.

Because we have a local order we have been able to require some specific strategies such as occupancy limits and 6 feet distance in public spaces. This has given us an advantage in slowing disease spread through decreasing the numbers of close contacts for any positive case. A simple example is seen in school quarantine for close contacts where many full classrooms have been quarantined in schools across the state and country with a positive case, but in Eau Claire County we have had many positive cases in schools but no full classroom quarantine due to 6 feet distance being maintained.

Q: Section 8.30.030 of the county ordinance and section J of the city ordinance states that if a business is considered a “source of community based infection” that businesses can be ordered to quarantine, isolate, or close and furthermore declared a nuisance and licensure revoked. What criteria is used to determine that one specific business is the source of community spread and what criteria needs to be met to be considered a nuisance?

A: Ultimately, this will be determined by the facts present at the time the order is issued. This ordinance applies to more than just the COVID-19 pandemic, it applies to communicable disease in general. So, and depending on how the business is the source of a community-based infection, will determine whether or not the business is ordered closed. The intent of this language is to eliminate the source of the community-based infection. The county ordinance allows closure “only for so long as necessary to stop or suppress the spread of disease, and shall only be in effect until such time as the business has taken the appropriate actions to

appropriately sanitize the business and take the appropriate precautions to prevent the future spread of the disease. . .”. In addition, and apart from the ordinances, the Health Department has the authority to address a specific outbreak through the ordered closure of a business at which an outbreak is occurring.

Q: If action is taken under Section 8.30.030 of the county ordinance related to individuals or businesses, what this the due process or appeal opportunity?

A: If a citation is issued the business will have the right to a trial in court, and all of the due process rights that are provided with forfeiture court proceedings.

Q: Page 24 of the WCA states that “...orders limiting or forbidding public gatherings, implicate a number of fundamental constitutional rights, such as the freedom to travel, freedom of religion, freedom of assembly, and freedom of speech. When a government action implicates a fundamental constitutional right, the actions must satisfy a “strict scrutiny” standard. Please explain how the health department and governing boards for this ordinance plan to ensure this standard is met so constitutional rights are preserved

A: The ordinance is specifically drafted to avoid orders or actions that would trigger that standard. Regardless, the health officer in the issuance of an order will consult with the City Attorney and Corporation Counsel to create orders that are narrowly tailored and use the least restrictive means possible to minimize risk of violating constitutional rights or legal challenge.

Q: How will this ordinance outline which science the health offices is using to make mandates?

A: The ordinance does not outline which science the health officer is using to make decisions. This ordinance is a “communicable disease” ordinance. The State of Wisconsin Administrative Rule related to Communicable disease requires that “(2) Local health officers shall follow the methods of control set out in official reports of the American Public Health Association and the American Academy of Pediatrics, unless specified otherwise by the state epidemiologist.” For all communicable disease responses, this is a way to assure a consistent application of best practice. The source of information for different communicable disease may and often are found at different sources but are guided by the State of Wisconsin communicable disease experts and the federal Centers for Disease Control and Prevention. To limit the sources the Health Officer can consult in making his or her decision may have future implications on the

ability of the Health Officer to make decisions based on the type of communicable disease and the progress of science at that time. The Health Officer as part of his or her duties will have the responsibility to consult with the state department of health and the local health board as well as the local legislative bodies in making decisions, and provide the information on which any order is based to the public as required by the ordinance.

Q: What sources will be considered as “best available scientific understanding?” Harvard, Stanford, NIH, CDC, WHO? Doctors? Nurses? Researchers? And what happens when these sources conflict one with another—as they frequently do?

A: As described above, the local health officer is required to be guided by national and state communicable disease experts. These are not designated by the ordinance but will be determined by the nature of the communicable disease, the progress of science at the time of the pandemic or outbreak, and the local conditions. Typically, the health officer will consult with local health care providers, authorities from the state and federal government, and reliable sources of information related to the specific communicable disease. Any sources used will be disclosed and published as required by the ordinance.

Q: Some health officials have argued that a health emergency can include gun control, fast food, reproductive rights, and racial equality. Who or what determines a “health risk” to the city of Eau Claire that would warrant restrictions against private businesses? And, what are the mechanisms and timelines in place for businesses to appeal that decision?

A: The ordinance is a “communicable disease” ordinance based on Wisconsin Statutes Chapter 252. The ordinance has substantive safeguards in place that limit under what circumstances and how the order can be issued and can only be done upon appearance of a communicable disease meeting the specifications of the ordinance. The examples above are clearly outside that statutory and ordinance scope. It also includes language that create “limitation, exceptions, or accommodations reasonably necessary to ensure conformance with requirements of federal, state and local disability laws, federal and state constitutions.” A business adversely affected by an order issued pursuant to the ordinance can avail themselves of the public input process available with the addition of legislative oversight.

Q: Can you speak on the potentially bad data numbers being made to make decisions that impact businesses?' Bad reporting driving up numbers:

<https://www.maciverinstitute.com/2020/09/bad-math-driving-wisconsins-exploding-positive-test-rate/>

A: All local health departments utilize a variety of data points in making any decisions related to community response to COVID-19. The State of WI shares many of the data points at their website: <https://www.dhs.wisconsin.gov/covid-19/data.htm>. In Eau Claire, we are utilizing a dashboard of data as part of our consideration of strategies. There is no single data point that drives decisions, including the positivity rate referenced. This dashboard of data is updated weekly and available on Fridays at: <https://coronavirus-and-covid-19-information-hub-eccounty.hub.arcgis.com/pages/local-statistics>.

Q: How are the mandatory quick tests that are being done in certain facilities that come up false positive and then are retested negative being counted...are the original false negatives being deleted from our case totals?

A: Antigen tests (the quick tests) are never considered a “case” in our ongoing case count at our local dashboard or at the state dashboard. They are listed as a “probable” case on the state website but this is not included in our case data. An antigen positive person that has a PCR follow up test – this is the recommendation – and is found to be negative is not ever counted as a positive case. If they have an antigen positive test and a subsequent PCR positive test they are only counted as one positive case.

Q: Will a court order be required to force quarantine?

A: Quarantine and isolation are not addressed by this ordinance; quarantine and isolation are statutory authorities found in Wis. Stats. 252.06. Court orders are part of the locally-recommended process.

Q: Why was none of this done during H1N1?

A: H1N1 was an influenza virus, health care providers and public health knew, in a short time frame, how to prevent rapid spread, the symptoms were apparent, and there were not reported “asymptomatic” or low symptomatic cases. A fairly rapid vaccine was also available. Many fewer people died from H1N1 and the spread was much less impactful.

Q: Please define what is considered “novel” or “life threatening.”

A: “Novel” = new. “Life Threatening” = that which threatens human life or has the potential to threaten human life.

Q: If under this proposed ordinance, if the health officer orders to close local businesses and shelter in place, would the local health order supersede the right to function as an essential business?

A: The ordinance does not contemplate whether or not something is an “essential” business and avoids classifications whenever possible. Not all communicable diseases are spread in the same ways, or have the same infection rates. Orders will take into consideration the need to limit exposure, based on the nature of the communicable disease, based on the best available scientific understanding at the time, and based on the nature of the business to impact the spread of the disease. Generally, state and federal orders supersede local orders, except that local orders may be more restrictive.

Q: Can you talk about how the COVID-19 Economic Recovery Taskforce has been involved with this Health Ordinance, and what is their response to it?

A: The Taskforce served as a group to convene business partners to share information rapidly in the quickly changing landscape presented by COVID-19, as well as to proactively connect to support health, safety, and economic vitality. They offer solutions and strategies for businesses in navigating financial assistance and obtaining resources necessary to continue to thrive. The Taskforce has not taken a position on the proposed legislation. Information on the Taskforce is available here: <https://coronavirus-and-covid-19-information-hub-eccounty.hub.arcgis.com/pages/chippewa-valley-economic-recovery-task-force>.

Q: Local governments are guided by Home Rule Doctrine. If the legislature deliberately refuses to act, does that allow the city to violate home rule or must they limit themselves to offer advisory only orders?

A: This is a misstatement of what home rule authority means, because home rule is just the opposite. If the legislature takes action that is of “statewide concern” then the local government cannot take action that opposes that action. A refusal by the state legislature to take action does not in any way restrict the actions a municipality or county may lawfully take.

The Home rule statute for municipalities is found at Wis. Stats. Section 66.0101; and for the county at Wis. Stats. Section 59.03.

Q: Will the EC Health Director mandate the vaccine when it is available?

A: Vaccines are an authority retained by the state and that authority is not implicated by this ordinance.

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